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[Proposed] Counsel to the Official Committee of Unsecured Creditors

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA**

In re:

BORREGO COMMUNITY HEALTH
FOUNDATION,

Debtor and Debtor in Possession.

Case No.: 22-02384-LT11

Chapter 11

**JOINDER OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS IN SUPPORT OF
DEBTOR'S OMNIBUS REPLIES TO OPPOSITIONS
TO DEBTOR'S MOTION FOR THE ENTRY OF AN
ORDER (1) APPROVING FORM OF ASSET
PURCHASE AGREEMENT; (2) APPROVING
AUCTION SALE FORMAT AND BIDDING
PROCEDURES; (3) APPROVING PROCESS FOR
DISCRETIONARY SELECTION OF STALKING
HORSE BIDDER AND BID PROTECTIONS;
(4) APPROVING FORM OF NOTICE TO BE
PROVIDED TO INTERESTED PARTIES;
(5) SCHEDULING A COURT HEARING TO
CONSIDER APPROVAL OF THE SALE TO THE
HIGHEST AND BEST BIDDER; AND
(6) APPROVING PROCEDURES RELATED TO
THE ASSUMPTION OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES; AND
(II) AN ORDER AUTHORIZING THE SALE OF
PROPERTY FREE AND CLEAR OF ALL CLAIMS,
LIENS AND ENCUMBRANCES**

Date: December 7, 2022
Time: 2:00 p.m.
Place: Jacob Weinberger United States Courthouse
325 West F Street, Dept. 3, Room 129
San Diego, CA 92101
Judge: Hon. Laura S. Taylor

[Relates to Docket Nos. 161, 187, 199, 201, 206, 260, and
261]

The Official Committee of Unsecured Creditors (the “Committee”) of Borrego Community Health Foundation (the “Debtor”), hereby joins and incorporates as if fully set forth herein, the Debtor’s omnibus replies [Docket Nos. 260 and 261] (the “Debtor’s Replies”) to the oppositions to *Debtor’s Motion for the Entry of an Order (1) Approving Form of Asset Purchase Agreement; (2) Approving Auction Sale Format and Bidding Procedures; (3) Approving Process for Discretionary Selection of Stalking Horse Bidder and Bid Protections; (4) Approving Form of Notice to be Provided to Interested Parties; (5) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest and Best Bidder; and (6) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an Order Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* [Docket No. 161] (the “Bidding Procedures Motion”),¹ filed by California Department of Health Care Services (“DHCS”) [Docket No. 187], AB Staffing Solutions, LLC [Docket No. 199], Inland Empire Health Plan (“IEHP”) [Docket No. 201], and the United States Department of Health and Human Services (“HHS”) [Docket No. 206] (collectively the “Oppositions”) and, in support thereof, respectfully states as follows:

The Committee strongly supports the approval of the Bidding Procedures Motion, which establishes the procedural groundwork in furtherance of a value-maximizing sale transaction that will ensure that the Debtor’s clinics can continue to provide vital healthcare to underserved communities in Southern California. To that end, the Debtor and the Committee have been working hand-in-hand since the Committee’s formation in pursuit of what should be all parties’ shared goal of a successful going concern Sale, and the Bidding Procedures and the Assumption and Assignment Procedures reflect the Committee’s input into the process.

Two of the Oppositions—those filed by DHCS and HHS—are best characterized as “planting a flag” as to positions those parties might take to the ultimate terms of a Winning Bid APA at the Sale Hearing, but do not articulate any objection to the purely procedural Bidding Procedures Motion, which serve the purpose of “facilitat[ing] an open and fair public sale designed to maximize

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Bidding Procedures Motion.

1 value for the estate.”² To the extent that DHCS and/or HHS object to the Debtor’s consummation of
 2 a Winning Bid APA for the reasons set forth in their Oppositions,³ such matters should be addressed
 3 at the Sale Hearing.⁴

4 Dated: December 3, 2022

PACHULSKI STANG ZIEHL & JONES LLP

5 By /s/ Jeffrey N. Pomerantz
 6 Jeffrey N. Pomerantz

7 [Proposed] Counsel to the Official
 8 Committee of Unsecured Creditors
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22 _____
 23 ² *In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998); *see also In re Cormier*, 382 B.R. 377, 388 (Bankr. W.D. Mich. 2008) (quoting *Edwards*).

24 ³ For the avoidance of doubt, and for the reasons discussed in further detail in the Debtor’s Replies, the Committee
 25 disagrees with many of the legal arguments raised by DHCS and HHS in their Oppositions. For instance, neither
 26 opposition cites to Judge Robles’ decision in *In re Verity Health Sys. of Calif., Inc.*, 606 B.R. 843 (Bankr. C.D. Cal. 2019), which well-reasoned and recent ruling specifically holds that Medicare and Medi-Cal Provider Agreements are
 27 statutory entitlements that may be sold free and clear pursuant to section 363(f) of the Bankruptcy Code and not, as
 28 DHCS and HHS contend, executory contracts. Moreover, the Committee expects that the substance of DHCS’
 opposition will be a central subject of the pending mediation before Judge Montali.

⁴ *See, e.g., In re Nashville Senior Living, LLC*, 2008 Bankr. LEXIS 3197, at *3-5 (Bankr. M.D. Tenn. Oct. 22, 2008)
 (stating, *inter alia*, that a party’s objection that a debtor is attempting to sell assets “they do not possess” is not “relevant
 to the procedures order currently sought by the debtors” and is “preserved for a future hearing to approve any eventual
 sale”).

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
10100 Santa Monica Boulevard, 13th Floor, Los Angeles, California 90067

A true and correct copy of the foregoing document entitled **JOINDER OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS IN SUPPORT OF DEBTOR'S OMNIBUS REPLY TO OPPOSITIONS TO DEBTOR'S MOTION FOR THE ENTRY OF AN ORDER (1) APPROVING FORM OF ASSET PURCHASE AGREEMENT; (2) APPROVING AUCTION SALE FORMAT AND BIDDING PROCEDURES; (3) APPROVING PROCESS FOR DISCRETIONARY SELECTION OF STALKING HORSE BIDDER AND BID PROTECTIONS; (4) APPROVING FORM OF NOTICE TO BE PROVIDED TO INTERESTED PARTIES; (5) SCHEDULING A COURT HEARING TO CONSIDER APPROVAL OF THE SALE TO THE HIGHEST AND BEST BIDDER; AND (6) APPROVING PROCEDURES RELATED TO THE ASSUMPTION OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (II) AN ORDER AUTHORIZING THE SALE OF PROPERTY FREE AND CLEAR OF ALL CLAIMS, LIENS AND ENCUMBRANCES** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) **December 3, 2022**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Christine E. Baur** christine@baurbklaw.com, admin@baurbklaw.com
- **Tanya Behnam** tbehnam@polsinelli.com
- **Daren Brinkman** dbrinkman@brinkmanlaw.com, office@brinkmanlaw.com;7764052420@filings.docketbird.com
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- **Randy B. Soref** rsoref@polsinelli.com
- **Andrew B. Still** astill@swlaw.com, kcollins@swlaw.com
- **Kelly Ann Mai Khanh Tran** kelly@smalllawcorp.com, stefanny@smalllawcorp.com
- **United States Trustee** ustp.region15@usdoj.gov
- **Kenneth K. Wang** kenneth.wang@doj.ca.gov
- **Helen Yang** helen.yang@squirepb.com, helen-h-yang-8259@ecf.pacerpro.com;PHX_DCKT@squirepb.com

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (date) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

December 3, 2022
Date

Nancy H. Brown
Printed Name

/s/ Nancy H. Brown
Signature